United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

No. 74-1472

74-1472

B P/S

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETER J. BRENNAN, Secretary of Labor,

Plaintiff-Appellee,

and

ANGEL ROMAN,

Intervenor-Appellee,

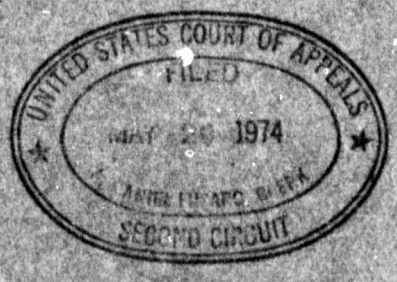
v.

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, AMALGAMATED MACHINE, INSTRUMENT AND METAL LOCAL 485,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR THE APPELLEE SECRETARY OF LABOR



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QUESTIONS PRESENTED

1. Whether the district court erred in setting aside the election of Hamilton Archer as business manager of Local 485 on the ground that his election violated the provision of Local 485's constitution that renders business agents of the Local ineligible for elective local office.

1/ Peter J. Brennan has succeeded James D. Hodgson as Secretary of Labor; accordingly Secretary Brennan should be automatically substituted as the plaintiff-appellee in this action. Fed. R. App. P. 43(c).

2. Whether the court abused its discretion in accepting the Secretary's proposed relief and ordering Mr. Archer to resign as business manager thirty days prior to the new supervised election for that office.

STATEMENT OF THE CASE

This action was instituted by the Secretary of Labor pursuant to Title IV of the Labor-Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. 401 et seq., to declare void Local 485's 1970 election for the office of business manager and to direct a new supervised election. The Secretary's complaint charges that this election violated Section 401(e) of the LMRDA, 29 U.S.C. 481(e), which requires union elections to be conducted in accordance with the union's constitution. Article XI, section 7 of Local 485's constitution provides in part (P. Exh. 1[2/]):

> A Local Organizer or Business Agent shall not be eligible for election to any office in the Local while he is an Organizer or Business Agent.

2/ The references used in this brief are as follows:

Apt. Br. ____	Appellant's Brief
Archer Dep. ___	Mr. Archer's Deposition taken March 5, 1973 (P. Exh. 8)
Conf. Memo. ___	District Court's Conference Memorandum and Order entered December 16, 1970
Const.	Local 485's Constitution (P. Exh. 1)
D. Exh. ___	Defendant's Exhibit
F. p. ___ or F. No. __	District Court's Findings of Fact entered March 14, 1974
Order, ¶ ___	District Court's Order entered April 5, 1974
P. Exh. ___	Plaintiff's Exhibit
Tr. ___	Transcript of Trial

The district court found that this provision was violated in the 1970 election because Hamilton Archer, the candidate elected business manager, was a business agent of Local 485 at the time of the election (F. pp. 12-13, 19-20). The district court declared Mr. Archer's election void and directed that a new election for that office be held in September 1974 under the supervision of the Secretary (Order, ¶ 1). Accepting the Secretary's proposed relief, the court below further ordered Mr. Archer to resign as business manager at least thirty days prior to the supervised election (Order, ¶ 2). Any business agent who runs for the office of business manager must also resign at least thirty days before the election (Order, ¶ 3). Local 485 appeals from this order.

Local 485 of the International Union of Electrical, Radio and Machine Workers, AFL-CIO, had approximately 6,000 members during the period in issue, September 1969 (F. No. 27, Tr. 73). Its officers are elected for terms of two years in February of each even-numbered year (Const. Arts. IV and XI). The chief executive of the Local is its business manager, not its president (Defendant's Trial Memorandum, p. 6; see Conf. Memo. 1).[3/] Article IV, section 8(a) of the constitution specifies his duties:

> The Business Manager shall be responsible for the supervision of the full time employees and Organizational Staff of this Local. He shall execute the Local's

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3/ The business manager's salary is larger than the president's (Tr. 135).

> decisions for organizing the unorganized, for collective bargaining, and contract enforcement; assist in adjusting grievances, and perform such other duties, with the approval of the Local Executive Board, as may be necessary for the proper and effective functioning of the affairs of the Local and the execution of its programs and policies. He shall give full reports to each Local Membership and Local Executive Board meeting giving account of all activities of the Organizational Staff and the activities in each shop concerning the Local program. He shall have no dealings with an employer without the presence or authority of the regularly elected Shop Committee or its representatives. The salary and expense allowance of the Business Manager shall be determined by the Local Executive Board but shall not exceed the average wage paid to skilled men in the industry. He shall be a member of the Local Executive Board and shall meet with the Local Executive Board and Administrative Committee.

For two years prior to September 1969, however, the position of business manager in Local 485 had been vacant (F. No. 35; Tr. 118-120). Then on September 26, 1969, acting upon the recommendation of the Local president, Charles Fay, the officers of the Local voted unanimously to designate Hamilton Archer as temporary business manager to serve until the next Local election in February 1970 (F. No. 24; Tr. 123-125; P. Exh. 2). Mr. Archer's appointment was ratified on October 18, 1969, by the Local's executive board, which includes over seventy members consisting of the Local officers, the shop chairmen of all shops having more than fifty members of Local 485, and specified members-at-large (F. No. 32; Tr. 127-128; Const. Art. V). The general membership of the Local, however, had no opportunity to participate in Mr. Archer's appointment (F. No. 29).

Prior to the appointment as temporary business manager, Mr. Archer had been a business agent of the Local for three years (F. No. 20). In this capacity he had provided services to a number of the shops represented by Local 485 in such areas as negotiating contracts and hearing grievances (Tr. 5). He also devoted a portion of his time to organizing new members (F. No. 22). Local 485 had one other full-time business agent and one organizer who provided the services of a business agent to some shops (Tr. 87-88). In addition, four of the elected officers also served as business agents to shops (Tr. 88; see F. No. 50). After his appointment as temporary business manager, Mr. Archer continued to provide services to some shops, but devoted 70 to 80 percent of his time to overseeing the work of the Local (F. No. 23).

At the December 18, 1969, meeting of the Local, Mr. Archer was nominated for the office of business manager (F. No. 40; P. Exh. 3). He was the only nominee for that office. Two of the Local's business agents were nominated for vice president and corresponding and recording secretary respectively. President Fay ruled both of these nominations out of order in light of the provision in the Local's constitution declaring business agents ineligible for elective offices (P. Exh. 3).

The election was held February 24, 1970 (F. No. 17). All of the candidates ran unopposed except for those running for trustees and executive board representatives (P. Exh. 4).

Two days after the election, Angel Roman and eight other members of Local 485 protested the conduct of the election in a complaint filed with the Local's executive board (F. No. 7; D. Exh. B). Mr. Roman had been nominated for corresponding secretary, but his nomination had been ruled out of order by the Local's president because he was a business agent (P. Exh. 3). After exhausing his internal union remedies without success, Mr. Roman then filed a complaint with the Secretary (F. No. 7).

The Secretary investigated the complaint pursuant to section 402(b) of the LMRDA, 29 U.S.C. 482(b), and found probable cause to believe that a violation of the LMRDA election provisions had occurred during the election for business manager (F. No. 8). Accordingly, this action was commenced to obtain a declaration that the election was void and an order directing a new supervised election. Mr. Roman, the complaining member of Local 485, intervened as a plaintiff.[4/]

Following a trial, the district court (Dooling, J.) declared the 1970 election for business manager void. After finding the facts as outlined above, the court first concluded that Mr. Archer's appointment as temporary business manager

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4/ About one month after protesting Mr. Archer's election, Mr. Roman was laid off as a business agent by Mr. Archer (Tr. 87). Mr. Roman's complaint to the Secretary also challenged this action, but the Secretary found no probable violation of the LMRDA based on evidence that Mr. Roman had not been performing his organizational duties and that a reduction in the number of business agents was warranted because Local 485 had recently ceased to represent what had been its largest shop.

was unlawful because it violated Article XI, section 10 of Local 485's constitution (F. pp. 16-18). That section provides in part (P. Exh. 1, p. 7):

> In the event a vacancy occurs in any office or elected position, the vacancy for the unexpired term shall be filled by nomination and election at the next regular meeting of the Local.

Next, the court concluded that although Mr. Archer performed some of the work of a business manager between his appointment in September 1969 and the challenged election in February 1970, Local 485 had recognized him solely as a business agent for purposes of internal Local management, record keeping, and compensation (F. p. 19). Accordingly, the court concluded that for purposes of the challenged 1970 election, Mr. Archer had been a business agent, not a business manager, and for that reason, was ineligible for office under Article XI, section 7 of the Local's constitution (F. pp. 19-20).

Following oral argument regarding appropriate relief, the court accepted the Secretary's proposed order. That order first directs Local 485 to conduct a new election for the office of business manager under the Secretary's supervision at the Local's next regular business meeting in September, 1974. Second, the order directs Mr. Archer to resign as business manager at least thirty days before the scheduled election. Finally, the order directs any business agents or organizers who are going to run for the office of business manager to resign at least thirty days before the scheduled election. Local 485 appeals from that order and from the order declaring its 1970 election void.

STATUTE INVOLVED

Section 401(e) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 481(e) provides in part:

> In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. * * * The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter.

Section 402 of the LMRDA, 29 U.S.C. 482, provides:

> (a) Filing of complaint; presumption of validity of challenged election.
>
> A member of a labor organization --
> (1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or
> (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,
> may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) Investigation of complaint; commencement of civil action by Secretary; jurisdiction; preservation of assets.

The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this subchapter and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) Declaration of void election; order for new election; certification of election to court; decree; certification of result of vote for removal of officers.

If, upon a preponderance of the evidence after a trial upon the merits, the court finds --

(1) that an election has not been held within the time prescribed by section 481 of this title, or

(2) that the violation of section 481 of this title may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the

removal of officers pursuant to subsection (h) of section 481 of this title, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) Review of orders; stay of order directing election.

An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

ARGUMENT

I

THE DISTRICT COURT CORRECTLY SET ASIDE LOCAL 485's 1970 ELECTION FOR BUSINESS MANAGER SINCE THE CANDIDATE ELECTED TO THAT OFFICE WAS INELIGIBLE BECAUSE HE WAS THEN A BUSINESS AGENT.

As previously noted, Section 401(e) of the LMRDA, 29 U.S.C. 481(e), provides that a union "election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter." Article XI, section 7 of Local 485's constitution provides, "A Local Organizer or Business Agent shall not be eligible for election to any office in the Local while he is an Organizer or Business Agent." The Local does not claim that

this provision is in any way inconsistent with the LMRDA (Conf. Memo 1). Hence, the legal issue of whether Local 485's 1970 election for business manager was invalid turns solely upon whether the district court clearly erred in finding as a fact that Hamilton Archer, the candidate elected as business manager, was a business agent of Local 485 at the time of his election.

There is ample evidence supporting this finding. First, Mr. Archer himself testified that he had not formally resigned as business agent (Tr. 84-85; see F. Nos. 39-41; but see, Archer Dep. 59-60). Second, in its annual reports to the Secretary, Local 485 did not report Mr. Archer as business manager until after his election in 1970 (F. No. 58; P. Exhs. 18 and 19).[5/] Third, Mr. Archer continued to be paid his business agent's salary between the time of his appointment as temporary business manager and his 1970 election (F. Nos. 53-54; Tr. 82-84). Fourth, following Mr. Archer's appointment, no new business agent was hired to take over Mr. Archer's old duties, and there was no systematic reassignment of shops previously serviced by him to other business agents (F. Nos. 42-47; Apt. Br. 9). Instead, he continued to function as business agent for at least nine of the ten to seventeen shops that he had previously serviced (F. Nos. 45, 47).

5/ The 1970 report states that Mr. Archer is a new business agent, but the Local undoubtedly intended to report him as a new business manager.

Local 485 does not challenge these factual findings as clearly erroneous. Indeed, it concedes that they are correct (Apt. Br. 3, 6, 8, 9). Instead, the Local argues that Mr. Archer was business manager at the time of his 1970 election so he could not have been a business agent (Apt. Br. 15). The Local, however, offers no reason why Mr. Archer could not have had a dual role as both business manager and business agent. As he was certainly a business agent for purposes of his compensation and the Local's reports to the Department of Labor, it follows that he was ineligible for elective office regardless of whether or not he was also business manager.

Although the Local does not attempt to bridge this fatal gap in their argument, it might be contended that if Mr. Archer held a dual position at the time of the election, he would have been eligible for election pursuant to Article XI, section 17. That section provides, "Any member occupying an elected office or position may be nominated to succeed himself." The Local construes this section to override the proscription in Article XI, section 7 which specifically bars business agents from eligibility. This construction is presumably the basis upon which four of the Local's major officers were serving as business agents at the time Mr. Archer was appointed business manager (Tr. 88). The Local's construction thwarts the purpose of the provision which is to keep business agents out of union

politics (Tr. 279). In any event, even if the Local's construction were valid, it would not apply to Mr. Archer. He was not "occupying an elective office" during the term of his appointment as temporary business manager. Hence, even if Mr. Archer were both a business manager and a business agent immediately prior to the contested election, he was still ineligible for election.

The district court did not reach this question because it properly held that Mr. Archer was not the business manager at the time of his election. The court held that Mr. Archer's appointment as temporary business manager was invalid under Article XI, section 10 of the Local's constitution (F. pp. 16-18). That section provides in part:

> In the event a vacancy occurs in any office or elected position, the vacancy for the unexpired term shall be filled by nomination and election at the next regular meeting of the Local. Nominations and elections to fill vacancies shall be conducted in accordance with the procedures of this Article insofar as applicable.

Local President Fay testified that in filling the business manager's vacancy by appointment rather than by special election, he proceeded on the basis that Article XI, section 10 was inapplicable because he "was not confronted with an unexpired term of a candidate, * * * [but rather, he] was filling a position that had not been filled over an extended period of time" (Tr. 126). The district court's rejection of this position

is entirely persuasive: the Local's view offends "the basic scheme [of the constitution] of solidly lodging the power to appoint officers in the membership and in them exclusively" (F. p. 18).

In this Court, Local 485 advances three arguments to challenge this holding, but they are all plainly unmeritorious. First, the Local contends (Apt. Br. 12-15) that the court could not question the validity of Mr. Archer's appointment because no Local member had filed a timely challenge to that appointment (F. No. 34). To be sure, the Supreme Court held in Hodgson v. Local 6799, United Steelworkers of America, 403 U.S. 333 (1971), that the Secretary could not challenge a meeting-attendance requirement for eligibility for union office when acting upon the complaint of a union member who had protested only "wholly unrelated" matters in the internal union proceedings. 403 U.S. at 341. That precedent, however, does not support Local 485's contention here. Far from being wholly unrelated to Mr. Roman's complaint, the status of Mr. Archer on the date of the election is the decisive issue. The district court inquired into the validity of Mr. Archer's appointment solely for the purpose of rejecting the Local's contention that the contested election was valid because Mr. Archer was then the business manager, not a business agent. Neither Mr. Roman, the Secretary, nor the court below seeks, for example, to invalidate any of Mr. Archer's

official actions during the term of his appointment (see F. p. 18). For the purpose of determining whether the contested election was invalid, then, the legality of Mr. Archer's appointment can -- indeed must -- be examined.

The other two contentions of the Local concern the merits of the district court's holding that the appointment was invalid. Local 485 contends (Apt. Br. 18-19) that Mr. Archer's appointment was authorized by 29 C.F.R. 452.25, which provides (38 Fed. Reg. 18327 (1973)):

> Title IV governs the regular periodic elections of officers in labor organizations subject to the Act. No requirements are imposed with respect to the filling by election or other method of any particular office which may become vacant between such regular elections. If, for example, a vacancy in office occurs in a local labor organization, it may be filled by appointment, by automatic succession, or by a special election which need not conform to the provisions of Title IV. The provisions of section 504 of the Act, which prohibit certain persons from holding office, are applicable to such situations. While the enforcement procedures of section 402 are not available to a member in connection with the filling of an interim vacancy, remedies may be available to an aggrieved member under section 102 of the LMRDA or under any pertinent State or local law.

Clearly, this regulation does not authorize Local 485's officers to violate their own constitution. Section 452.25 merely provides that unions can, if they so desire, confer upon their officers the power to fill vacancies by appointment without violating the LMRDA or the regulations.

Moreover, this regulation completely undermines the Local's argument that Mr. Archer's appointment cannot be questioned in this action. As Section 452.25 shows, the election protest procedures were unavailable at the time of the appointment.

Local 485 also mistakenly relies (Apt. Br. 19) upon 29 C.F.R. 452.3 (38 Fed. Reg. 18325 (1973)), which provides (footnote omitted):

> The interpretation consistently placed on a union's constitution by the responsible union official or governing body will be accepted unless the interpretation is clearly unreasonable.

Here, the Local is "clearly unreasonable" in contending that it can appoint officers to fill vacancies despite the constitutional provision stating, "In the event a vacancy occurs in any office or elected position, the vacancy for the unexpired term shall be filled by nomination and election at the next regular meeting of the Local." The phrase, "for the unexpired term," limits the duration of the appointment, not the manner in which the vacancy arises.

Wirtz v. Hotel, Motel and Club Employees Union, Local 6, 391 U.S. 492 (1968), held invalid a union bylaw which limited eligibility for major elective offices to those members who had previously held elective office. In so ruling, the Supreme Court stated, "Control by incumbents through devices which operate in the manner of this bylaw is precisely what Congress legislated

against in the LMRDA." 391 U.S. at 505. The present case reveals a similar example of incumbents controlling access to office at the price of union democracy. At the time the Local president selected Mr. Archer as temporary business manager, both Mr. Archer and Mr. Roman had expressed interest in this office (Tr. 72, 282-284; see F. No. 13). Since both men were then business agents, they would have had to resign in order to seek election to that post. The incumbent president recommended Mr. Archer and the other incumbent officers unanimously appointed him temporary business manager in September 1969. The 6,000 members of the Local 485 had no opportunity to participate in the appointment of their chief executive despite a constitutional provision requiring vacancies to be filled by election (F. Nos. 28-29). In October 1969, the executive board ratified Mr. Archer's appointment. The Local members were not notified in advance that the board would act on the appointment (F. No. 33), so again there was no opportunity for their participation. In November 1969 a testimonial dinner was given for Mr. Archer under the sponsorship of a committee led by the incumbent officers (D. Exh. A). In December, Mr. Archer was the only nominee for the position of business manager. The two business managers who immediately preceded Mr. Archer obtained that office in a similar manner (Tr. 116-118). This practice in Local 485 is exactly what the LMRDA was designed to correct.

In sum, the uncontested facts show that Mr. Archer was a business agent at the time of the contested election. For that reason he was ineligible for office. Even if Mr. Archer is considered to have occupied the dual positions of business agent and business manager, he was still ineligible. The district court correctly held that Mr. Archer was only a business agent at the time of the contested election, however, because his initial appointment as temporary business manager violated the provision of the Local's constitution requiring special elections to fill vacancies.

II

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY ADOPTING THE SECRETARY'S PROPOSED RELIEF AND ORDERING ARCHER TO RESIGN AS BUSINESS MANAGER THIRTY DAYS PRIOR TO THE RERUN ELECTION.

In seeking to overturn the relief ordered below, the Local faces "a heavy burden of persuasion and proof." Brennan v. Local 551, United Automobile, Aerospace and Agricultural Implement Workers of America, Inc., 486 F. 2d 6 (C.A. 7, 1973). Section 402(b) of the LMRDA, 29 U.S.C. 482(b), expressly confers broad discretion upon the Secretary in framing appropriate relief by providing for "an election * * * under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe." In addition, the relief below is based upon

the district court's own equity powers, see Trbovich v. United Mine Workers, 404 U.S. 528, 537 n.8 (1972), and for that reason, too, cannot lightly be overturned. See Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

In the present case, Local 485 cannot carry its heavy burden in challenging the relief ordered below. The Local contends that section 402(a) of the LMRDA, 29 U.S.C. 482(a), assures Mr. Archer the right to remain in office until the results of the supervised election have been certified by the Secretary and an appropriate decree entered by the court (Apt. Br. 16). Section 402(a) provides:

> The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

The "final decision thereon" refers to a judicial decision on the validity of the challenged election, rather than an order declaring the results of the supervised election. Note, Union Elections and the LMRDA: Thirteen Years of Use and Abuse, 81 Yale L. J. 407, 523 n.526 (1972). Significantly, section 402(d), 29 U.S.C. 482(d), expressly makes such orders "appealable in the same manner as the final judgment in a civil action * * *."

The legislative history confirms this construction. Thus S. Rep. No. 187, 86th Cong., 1st Sess. 22 (1959), states:

> Since union business must not be brought to a standstill whenever an election is challenged, it is necessary to make some provision for the conduct of business while the proceeding is in progress. It would be intolerable for the Government to appoint outsiders to act as receivers. The choice lay between keeping the old officers in office or allowing the new officers to enter upon their duties even though their right may be challenged. The latter course seems preferable. A union election should be presumed valid until the contrary can be reasonably established. There would be the least disruption of normal procedure within the union if they were continued in office. However, the ultimate decisions upon this point should be made by the labor unions themselves. Consequently, section 302(a) provides that pending a final court decision the affairs of the union should be administered by the new officers or in such other manner as the constitution and bylaws might provide.

Plainly it is the judicial decision setting aside the contested election, not a subsequent order, that reasonably establishes the invalidity of an election. Therefore, Local 485 errs in contending that the relief below is contrary to section 402.[5/]

Aside from this statutory contention, the Local does not challenge the reasonableness of requiring Mr. Archer to resign thirty days prior to the supervised election, and this relief was plainly appropriate. The remedy of a supervised election is designed to prevent "the unfairness in the first election from infecting, directly or indirectly, the remedial

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5/ In the ordinary case, the Secretary thinks it proper for the officials whose election has been challenged to remain in office pending the outcome of a new election. However, there is nothing in the LMRDA itself which requires this result so a court in special circumstances can impose different conditions.

election." Wirtz v. Local 153, Glass Bottle Blowers Assn., 389 U.S. 463, 474 (1968). As in Glass Bottle Blowers, here there is a need to prevent an incumbent officer "who achieved office as [a] beneficiar[y] of violations of the Act" from "by some means perpetuating [his] unlawful control in the succeeding election. 389 U.S. at 474.[6/] As shown above, Mr. Archer's appointment as business manager was unlawful. One consequence of that violation was that Mr. Archer gained the advantages of an incumbent in the challenged 1970 election. It is proper that in rerunning the election under the Secretary's supervision, all candidates begin on an equal footing.[7/] The remedial order attempts to recreate the conditions existing before Mr. Archer's illegal appointment as business manager, leaving that office vacant until it is properly filled by a lawful election. There is no showing that Local's other officers and executive board cannot adequately conduct its affairs in the one-month interim period. In fact, for two years prior to the illegal appointment, the Local's activities were conducted without a business manager.

6/ The specific holding of Glass Bottle Blowers was that the intervention of an unsupervised election did not render moot the Secretary's challenge to a prior election. That holding is directly applicable here inasmuch as Local 485's 1972 election was held while this suit has been pending.

7/ There is no indication that Mr. Archer will not run for business manager in the new election.

Moreover, under paragraph 3 of the district court's order any business agent who runs for business manager must also resign his position thirty days before the election. Thus, the order does not single out Mr. Archer for unequal treatment. It might also be noted that the thirty-day period is more lenient than the Local demanded in the case of the complaining union member, Angel Roman. Mr. Roman was declared ineligible to run for corresponding and recording secretary in the February 26, 1970 election because he was a business agent when the nominations were made on December 18, 1969 (P. Exh. 3). Thus, Mr. Roman would have to have resigned as business agent two months prior to the 1970 election to be a candidate for office.

In sum, the Secretary and the district court acted well within the scope of their discretion in ordering Mr. Archer to resign thirty days prior to the supervised election.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be affirmed.

Respectfully submitted,

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MAY, 1974.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 1974, I served the foregoing brief upon counsel for the appellant and upon the intervenor by causing copies thereof to be mailed, postage prepaid, to:

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